

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

NAOMI SUE WHITE EAGLE,

Plaintiff,

v.

J MICHAELIS, et al.,

Defendants.

CASE NO. C22-5410 BHS-TLF

ORDER

THIS MATTER is before the Court on Magistrate Judge Theresa L. Fricke's Report and Recommendation (R&R), Dkt. 43, recommending that the Court grant Defendants Brandon Duncan and Melissa Holdway's motion for summary judgment, Dkt. 25, and dismiss the claims against Defendants Duncan and Holdway with prejudice.

White Eagle alleges that Defendant Holdway, a psychology associate with the Department of Corrections (DOC), violated her constitutional rights in a variety of ways. She alleges Holdway violated her Eighth Amendment rights by not providing her with treatment for her stomach and bowel issues and by responding with deliberate indifference to White Eagle's concern that, if White Eagle were found to be mentally unstable, she may not qualify for gender reaffirming surgery. Dkt. 9 at 5, 17. She further

1 argues that when Holdway offered her patients recreational materials during COVID-19  
2 lockdowns she violated White Eagle's constitutional rights because the offer did not  
3 constitute proper medical treatment. Dkt. 9 at 6.

4 The R&R concludes that White Eagle failed to present sufficient evidence of a  
5 constitutional violation by Defendants Holdway and Duncan. It concludes that White  
6 Eagle "failed to put forth any evidence to support a genuine issue of material fact  
7 regarding whether Defendant Holdway had any personal participation" in White Eagle's  
8 health care. It reasons that, as "a mental health provider, Defendant Holdway did not  
9 prescribe, assign or schedule medical treatments or appointment" and that she therefore  
10 "would not have been responsible" for treating White Eagle's bowel and stomach issues  
11 or canceling her medical appointments.

12 The R&R determined that, although White Eagle named as a defendant Brandon  
13 Duncan, a resolution specialist with DOC, she failed to make any factual allegations  
14 against him. Dkt. 43 at 9. The R&R determined there was "no evidence that Mr. Duncan  
15 personally participated in any of the acts or omissions alleged by Plaintiff" and therefore  
16 recommended dismissal with prejudice of the claims against him. *Id.*

17 Finally, the R&R explains the stringent "deliberate indifference standard"  
18 necessary to establish an Eighth Amendment violation and concludes that both Holdway  
19 and Duncan are entitled to qualified immunity given White Eagle's failure to submit  
20 evidence that the defendants personally participated in the allegations. Dkt. 43 at 11.

21 White Eagle has not objected to the R&R.  
22

1 A district court “shall make a de novo determination of those portions of the report  
2 or specified proposed finding or recommendations *to which objection is made.*” 28  
3 U.S.C. § 636(b)(1)(C) (emphasis added); *accord* Fed. R. Civ. P. 72(b)(3). “The statute  
4 makes it clear that the district judge must review the magistrate judge’s findings and  
5 recommendations de novo *if objection is made*, but not otherwise.” *United States v.*  
6 *Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc). A proper objection requires  
7 “specific written objections to the proposed findings and recommendations” in the R&R.  
8 Fed. R. Civ. P. 72(b)(2).

9 The Court, having reviewed the R&R and the remaining record, does hereby  
10 **ADOPT** the R&R, Dkt. 43, in full. Defendants Holdway and Duncan’s motion for  
11 summary judgment, Dkt. 25, is **GRANTED**. Plaintiff White Eagle’s claims against  
12 Defendants Duncan and Holdway are **DISMISSED with prejudice**.

13 **IT IS SO ORDERED.**

14 Dated this 29th day of January, 2024.

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BENJAMIN H. SETTLE  
United States District Judge